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8 Resurgent Capital Services, L.P.

FILED 11 MAR 9 12:46USDC-DRP

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON, PORTLAND DIVISION

ADAM FOXWORTHY,

Plaintiff,

vs.

LVNV FUNDING, LLC, a foreign limited liability company, and RESURGENT CAPITAL SERVICES, L.P., a foreign limited partnership,

Defendants.

Case No. **CV'11-291** **MO**

[Removal from Circuit Court For The State Of Oregon, County of Multnomah, Case No. 1012-17801]

**DEFENDANTS LVNV FUNDING, LLC
AND RESURGENT CAPITAL SERVICES,
L.P.'S NOTICE OF REMOVAL
PURSUANT TO 28 U.S.C. §§ 1331, 1441(b)
AND (c), AND 1446**

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
OREGON:**

PLEASE TAKE NOTICE that Defendants LVNV Funding, LLC (“LVNV”) and Resurgent Capital Services, L.P. (“Resurgent”) (collectively “Defendants”) hereby remove the action described below from the Circuit Court of the State of Oregon, County of Multnomah, to the United States District Court for the District of Oregon, Portland Division, pursuant to Sections 1331, 1441(b) and (c), and 1446 of Title 28 of the United States Code (“U.S.C.”). As set forth more fully below, this case is properly removed to this Court pursuant to 28 U.S.C. § 1441 because Defendants have satisfied the procedural requirements for removal and this Court has subject matter jurisdiction over

1 this action pursuant to 28 U.S.C. § 1331. In support of this Notice of Removal, Defendants state the
 2 following:

3 **I. THIS COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C.
 4 SECTIONS 1331 AND 1441**

5 On or about December 22, 2010, plaintiff Adam Foxworthy (“Plaintiff”) filed a Complaint in
 6 the Circuit Court of the State of Oregon, County of Multnomah (“Circuit Court”), entitled
 7 *Foxworthy v. LVNV Funding, LLC, et al.*, Case No. 1012-17801. Plaintiff’s complaint relates to
 8 alleged debt collection activity by Defendants. The Complaint alleges causes of action for violation
 9 of the Federal Fair Debt Collection Practices Act, and Invasion of Privacy. The Complaint and
 10 Summons are attached hereto as **Exhibit 1**, as required by 28 U.S.C. § 1446(a).

11 Because this Action arises under federal law that can be ascertained from the face of
 12 Plaintiff’s Complaint, this Court has original jurisdiction over this Action pursuant to 28 U.S.C. §
 13 1331. Furthermore, this Court has supplemental jurisdiction over all of Plaintiff’s other claims,
 14 which arise out of the “same case or controversy” pursuant to 28 U.S.C. § 1337(a). Accordingly, the
 15 Action may be removed to this Court by Removing Defendant pursuant to 28 U.S.C. § 1441.

16 **II. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED**

17 On or about December 22, 2010, Plaintiff filed this action in the Circuit Court. Defendants
 18 have not yet been served with a copy of said Complaint. This Notice of Removal is timely in that it
 19 was filed within thirty (30) days from the point at which Defendants had notice that the action was
 20 removable, and less than a year after the commencement of the state court action. *See* 28 U.S.C. §
 21 1446(b).

22 The Oregon State Circuit Court is located within the United States District Court for the
 23 District of Oregon, Portland Division. *See* 28 U.S.C. § 84(d). Thus, venue is proper in this Court
 24 because it is the “district and division embracing the place where such action is pending.” 28 U.S.C.
 25 § 1441(a).

26 In compliance with 28 U.S.C. § 1446(d), Defendants will serve on Plaintiff and will file with
 27 the Clerk of the Circuit Court, a “Notice to the Clerk of the Circuit Court and To Adverse Parties of
 28 Filing of Notice of Removal of Civil Action to Federal Court,” attaching a copy of this Notice of

1 Removal.

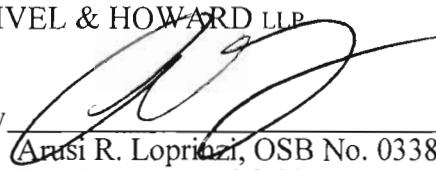
2 No previous application has been made for the relief requested herein, and Defendants are
3 not aware of any other parties that have been served with the Complaint at this time.

4 WHEREFORE, Defendants respectfully remove this action from the Circuit Court of the
5 State of Oregon, County of Multnomah, to this Court pursuant to 28 U.S.C. §§ 1331, 1441 and 1446.

6 DATED: March 9, 2011.

7 KIVEL & HOWARD LLP

8 By

9 
10 Arasi R. Loprinzi, OSB No. 033815
11 Email: aloprinzi@k-hlaw.com
12 Attorneys for Defendants
13 LVNV Funding, LLC and
14 Resurgent Capital Services, L.P.

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TRUE COPY

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

ADAM FOXWORTHY,)
Plaintiff,) Case No. 1212-17801
v.)
LVNV FUNDING, LLC,)
a foreign limited liability company,)
and RESURGENT CAPITAL SERVICES, L.P.,)
a foreign limited partnership,)
Defendants.)

TO: LVNV Funding, LLC, c/o its registered agent The Corporation Trust Company, Corporation Trust Center 1209 Orange Street, Wilmington, DE 19801.

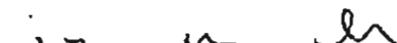
You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer". The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff. If you have any questions, you should see an attorney immediately. If you need help finding an attorney, you may call the Oregon State Bar Lawyer's Referral Service at (503) 684-3763 or toll free in Oregon at (800) 452-7636.

STATE OF OREGON)
ss.)
County of Washington)

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.


Justin M. Baxter, OBS # 992178
Attorney for Plaintiff


Justin M. Baxter, OBS # 992178
Attorney for Plaintiff

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.


Justin M. Baxter, OBS # 992178
Attorney for Plaintiff

Baxter & Baxter, LLP
8838 SW Canyon Lane, Suite 130
Portland, OR 97225
(503) 297-9031 (Telephone)
(503) 291-8031 (Facsimile)

EXHIBIT 1
Page 1 of 7

12:25
TRUE COPY

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

ADAM FOXWORTHY,)
Plaintiff,) Case No. 1212-17801
v.)
LVNV FUNDING, LLC,)
a foreign limited liability company,)
and RESURGENT CAPITAL SERVICES, L.P.,)
a foreign limited partnership,)
Defendants.)

TO: Resurgent Capital Services, L.P., aka Resurgent Capital Services, Limited Partnership, c/o its registered agent CT Corporation System, 388 State Street, Suite 420, Salem, OR 97301.

You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer". The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff. If you have any questions, you should see an attorney immediately. If you need help finding an attorney, you may call the Oregon State Bar Lawyer's Referral Service at (503) 684-3763 or toll free in Oregon at (800) 452-7636.

STATE OF OREGON)
ss.)
County of Washington)

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.


Justin M. Baxter, OBS # 992178

Attorney for Plaintiff


Justin M. Baxter, OBS # 992178

Attorney for Plaintiff

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.


Justin M. Baxter, OBS # 992178

Attorney for Plaintiffs

Baxter & Baxter, LLP
8835 SW Canyon Lane, Suite 130
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EXHIBIT 1
Page 2 of 7

TRUE COPY

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

6 ADAM FOXWORTHY,) Case No. 1012-17801
7 Plaintiff,) COMPLAINT
8 v.) Fair Debt Collection Practices Act; Invasion
9 LVNV FUNDING, LLC, a foreign limited) of Privacy
10 liability company, and RESURGENT) (Complaint Seeking Over \$50,000)
11 CAPITAL SERVICES, L.P., a foreign) Not Subject to Mandatory Arbitration
12 limited partnership,) Jury Trial Requested
13 Defendants.)

1.

15 Plaintiff Adam Foxworthy ("plaintiff") is a natural person residing in the State of Oregon.

16 2.

17 Defendant LVNV Funding, LLC. ("LVNV") is a foreign limited liability company engaged in
18 the business of collecting consumer debts.

19 3.

20 Defendant Resurgent Capital Services, L.P. ("Resurgent") is a foreign limited partnership
21 engaged in the business of collecting consumer debts.

22 4.

23 In or about 2007, plaintiff was contacted by Mercantile Adjustment Bureau regarding
24 plaintiff's AT&T Universal credit account issued by Citibank.

26 Page 1 - COMPLAINT

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EXHIBIT 1
Page 3 of 7

1 5.

2 Plaintiff agreed to a full and final settlement of the outstanding balance on the account,
3 which Mercantile Adjustment Burcau accepted.

4 6.

5 In April of 2008, defendant Resurgent contacted plaintiff and demanded payment of the
6 Citibank account.

7 7.

8 Plaintiff advised Resurgent that he had settled the account. Resurgent confirmed that it had
9 found records of the settlement.

10 8.

11 Redline Recovery sent plaintiff a letter dated December 28, 2009, which stated that the
12 plaintiff owed defendant LVNV \$2,379.11. That statement was false.

13 9.

14 Daniel N. Gordon , P.C., sent plaintiff a letter dated May 25, 2010, which stated that plaintiff
15 owed LVNV 2510.51. That statement was false.

16 10.

17 In or about November of 2010, plaintiff contacted Resurgent. A Resurgent employee
18 "Sharon" confirmed that Resurgent was aware of the settlement, but stated that Resurgent had
19 referred the account to Daniel N. Gordon, P.C. for continued collection activity.

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24 25 26 Page 2 - COMPLAINT

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EXHIBIT 1
Page 4 of 7

FIRST CLAIM FOR RELIEF

FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692 et seq.

11.

Plaintiff incorporates paragraphs 1 - 10 as if fully set forth herein.

12

Plaintiff is a consumer as defined by the Fair Debt Collection Practices Act ("FDCPA"), 15

U.S.C. § 1692a.

13

Defendants are each a "debt collector" within the meaning of 15 U.S.C. § 1692a.

14

The alleged debt at issue is a debt within the meaning of 15 U.S.C. § 1692a.

15.

Defendants violated the Fair Debt Collection Practices Act in the following ways:

- 1) Engaging in conduct the natural consequence of which is to harass, oppress, or abuse plaintiff in connection with the collection of a debt, in violation of 15 U.S.C. § 1692d;
- 2) Using false, deceptive, or misleading representations or means in connection with the collection the debt, in violation of 15 U.S.C. § 1692e;
- 3) Making false representations of the character, amount, or legal status of any debt, in violation of 15 U.S.C. § 1692e(2)(A);

16.

As a result of defendants' violations of the Fair Debt Collection Practices Act, plaintiff was

1 caused to suffer worry, fear, distress, paranoia, embarrassment, damage to his reputation and
2 humiliation, all to her damages in a reasonable amount to be determined by the jury not to exceed
3 \$55,000.

4 17.

5 Plaintiff is entitled to statutory damages of \$1,000, pursuant to 15 U.S.C. 1692k.

6 18.

7 Plaintiff is entitled to attorney fees, pursuant to 15 U.S.C. § 1692k.

8 SECOND CLAIM FOR RELIEF

9 INVASION OF PRIVACY

10 19.

11 Plaintiff incorporates paragraphs 1 - 10 as if fully set forth herein.

12 20.

13 Defendants' conduct intentionally intruded on plaintiff's solitude, seclusion and/or privacy.

14 Defendants' conduct was highly offensive to plaintiff and would be highly offensive to a reasonable
15 person. Defendants acted with malice.

16 21.

17 Defendants' conduct caused plaintiff to suffer damages including invasion of privacy,
18 intrusion of his solitude and seclusion, emotional distress, frustration, mental anguish, and
19 interference with normal and usual activities for which plaintiff seeks damages in a reasonable
20 amount not to exceed \$55,000.

21 PRAYER

22 Plaintiffs demand a jury trial on all claims. Wherefore plaintiff prays for a judgment as
23 follows:

24 Page 4 - COMPLAINT

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(503) 291-8172 (Facsimile)

1. On Plaintiff's First Claim for Relief for violations of the Fair Debt Collections Practices Act:

- a. Actual damages in an amount of \$55,000;
- b. Statutory damages of \$1,000; and
- d. Attorney fees and costs.

2. On Plaintiff's Second Claim for Relief for Invasion of Privacy:

- a. Actual damages in an amount \$55,000;
- b. Costs and expenses incurred herein.

DATED this 22nd day of December, 2010.

Justin M. Baxter, OSB No. 99217
Baxter & Baxter, LLP
Attorney for Plaintiff